



**CITY OF FALL RIVER MASSACHUSETTS
POLICE DEPARTMENT**

***Office of Professional Standards
Public Information Office***



Albert F. Dupere
Chief of Police

Lt. Paul Santos
Sgt. J.T. Hoar
Det. John Robinson

Monday, December 10th, 2018

MuckRock News / Amanda Rasinski
DEPT MR 63034-19136679
411A Highland Ave
Somerville, MA 02144-2516

RE: Public Records Request December 3rd, 2018
A response from the Press Information Officer

On December 3rd, 2018, the Fall River Police Department received your formal request for public records and I am informing you that the Fall River Police Department is prepared to honor it pursuant to the Massachusetts Public Records Law for the following records:

- Any lists, databases, and inventory rosters containing weapons used by officers (i.e., firearms, tasers, batons, etc.).

If no such records exist then I request the alternative records:

- All records pertaining to the weapons that may be carried by officers as determined by the chief of police, or the board, or officer having control of the police under the authority granted in M.G.L. ch.41, §98
- All records pertaining to the most recent audit of firearms owned by the department

With respect to your request,

- Any lists, databases, and inventory rosters containing weapons used by officers (i.e., firearms, tasers, batons, etc.).

If no such records exist then I request the alternative records:

- All records pertaining to the weapons that may be carried by officers as determined by the chief of police, or the board, or officer having control of the police under the authority granted in M.G.L. ch.41, §98
- All records pertaining to the most recent audit of firearms owned by the department

With respect to your request, the Department intends to withhold the following requested records:

- Any lists, databases, and inventory rosters containing weapons used by officers (i.e., firearms, tasers, batons, etc.).

If no such records exist then I request the alternative records:

- All records pertaining to the weapons that may be carried by officers as determined by the chief of police, or the board, or officer having control of the police under the authority granted in M.G.L. ch.41, §98
- All records pertaining to the most recent audit of firearms owned by the department.

The Department intends to withhold/redact the above-referenced requested records due to the applicability of the following exemptions and the reasons set forth below:

1. Exemption (n): This exemption applies to "records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety and cybersecurity." In particular, this exemption is intended to secure the safety of persons and public places by restricting access to records that may have been previously open to public inspection. The nature of the exemption requires a records custodian to make some value judgment regarding the requester in order to decide whether to release the information sought. Pursuant to the decision of the Supreme Judicial Court in *People for the Ethical Treatment of Animals (PETA) v. Dep't of Agric. Res.*, 477 Mass. 280 (2017) exemption (n) is to be construed using the following two prongs: (1) whether, and to what degree, the record is one a terrorist would find useful to maximize damage, and in that sense, jeopardize public safety; and (2) Whether the custodian has provided sufficient factual heft for the supervisor of public records or the reviewing court to conclude that a reasonable person would agree with the custodian's determination given the context of the particular case. These prongs must be considered together due to the inverse correlation between them. You have advised us that you are requesting these records because "There is an active public debate on the utility of firearms to provide safety and protection".

The records requested contain information of a nature an adversary could gain knowledge of, take advantage of, and protect themselves from prior to any assault on a Civilian, an Officer, or building, this building included. Information such as 'the number of Tasers', or 'the number of firearms', may present an adversary with the proper knowledge necessary to take on their target of opportunity or to pass it by and pick another target. If knowledge of what an officer is restricted to carrying were available, an assailant could properly equip themselves to defeat and overcome the known resistance and create a risk to public safety and the public in general with any and all weapons in the officers' possession or this department's possession. As a result, such information must be withheld under Exemption (n).

I am aware of a decision by the Supervisor of Records just (SPR15/544) which upheld a decision by the State Police not to release "a copy of inventory list of all non-lethal and less than lethal directed energy weapons" used by the State Police. I believe that decision applies to your request, and specifically, that Exemption (n) of the Public Records Law applies to your request.

Exemption (n) operates to permit an agency to withhold the following:

records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the

disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety.

I believe that disclosing publicly the numbers and types of weapons, particularly firearms, used and deployed by this Department, would undermine public safety as it relates to security measures and emergency preparedness and that the release of this information would be detrimental to the Department's law enforcement and public safety efforts. Again, a person planning an armed assault on a police officer or police station, or in other areas in the community, would benefit greatly by knowing what weapons he or she might encounter, and how many weapons the Department has in its inventory. The information could also subject the weapons to theft by a person learning detailed information about them.

While I believe that my response above is consistent with the Supervisor's ruling SPR15/544 State Police matter and that this Department need not divulge any of the information you have requested, I can tell you that this Department's issued firearm is the Smith & Wesson MP40 semi-automatic pistol and that one is issued to all sworn members of this Department. I can also tell you that one baton and one canister of oleoresin capsicum (e.g. chemical spray) are issued. The Department stocks an additional reasonable number of each weapon to allow for replacements should a weapon malfunction or become damaged.

Additionally, the Department does own other weapons; but, I cannot release further information about them for the reasons stated above.

Please be advised that pursuant to 950 CMR 32.00 and M.G.L. c. 66, section 10A (a) you have the right to appeal this decision to the Supervisor of Public Records within 90 calendar days. Such appeal shall be in writing and shall include a copy of the letter by which the request was made and, if available, a copy of the letter by which the custodian responded. The Supervisor shall accept an appeal only from a person who had made his or her record request in writing. Pursuant to M.G.L. c. 66, section 10A(c), you also have the right to seek judicial review by commencing a civil action in the superior court.

Should you have any questions, please do not hesitate to contact me.

Respectfully,



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